

EXHIBIT 28

1 day until you quit either the team or you quit the fraternity.

2 Q. And how was it decided who would be a redshirt?

3 MR. FRANK: Objection. Foundation.

4 THE COURT: Sustained.

5 Q. Were you a redshirt?

6 A. Yes.

7 Q. Okay. How was it decided for you to be a redshirt?

8 A. It's not like there's a total decision unless you're a
9 fringe person. They just select who is going to be the match
09:59 10 player. And then if you're not competing, then you maintain
11 eligibility, so you're a redshirt.

12 Q. Okay. And does the coach decide, or does the student
13 decide?

14 A. The coach decides.

15 Q. Okay. And was that true, to your knowledge, for all 12 or
16 13 redshirt your year?

17 A. Yes.

18 Q. What's the benefit of being a redshirt?

19 A. You get to train with the full squad, follow the guys on
09:59 20 the starting team without losing that year of eligibility, so
21 you can continue to play for the full four years even though
22 you're already on the team.

23 Q. You play for full four years after your redshirt year; is
24 that correct?

25 A. That's right.

1 Q. And what benefits do you get from being a redshirt?

2 A. The same. You get to train. You're a part of the system.
3 You learn the offense, the defense, all that sort of stuff,
4 without having the pressure you're competing and, like I said,
5 without losing that eligibility.

6 Q. And you have a year to develop physically?

7 A. Exactly.

8 Q. Okay. Do redshirts get in the pool when they're on the
9 team?

10:00 10 A. Yes.

11 Q. How do they get in the pool? What do you do? What do you
12 do in the pool as a redshirt?

13 A. The same as everybody else. We swim. We practice. We
14 develop skills. It's a normal practice. You're just divided
15 up by, you know, what level you are basically.

16 Q. And I take it you don't go to any of the games?

17 A. We're at home competitions.

18 Q. Excuse me. You don't go in the pool at the games?

19 A. Oh, no. No.

10:01 20 Q. Okay. Is it fair to say that a redshirt can have one
21 second in a game?

22 A. No. You cannot be a redshirt and compete in a match.

23 Q. Okay. How many redshirts were there on the team your
24 year?

25 A. About a dozen.

1 Q. Is that typical for the team?

2 MR. FRANK: Objection. Foundation.

3 THE COURT: Sustained.

4 Q. Are you aware of what the rosters looked like either
5 before or after that year?

6 A. I haven't looked at them, but I do recall when we were on
7 the team, the redshirts would talk about how many of us there
8 were. I mean, there was 30 --

9 MR. FRANK: Objection. Hearsay.

10:01 10 THE COURT: Sustained.

11 Q. Now, in August, you and Johnny, you were living in the
12 same room? Is that what you told us?

13 A. Yes.

14 Q. There's two beds in a small room off this living room?

15 A. Yes.

16 Q. Okay. And would you go to practice together?

17 A. Yes, we would.

18 Q. Okay. Did you see Johnny in the water in August?

19 A. I did.

10:02 20 Q. Okay. What did you observe about him at practice?

21 A. Nothing out of the ordinary. He was like the rest of us.

22 Q. Okay. Did you observe -- was there anything he was
23 particularly good at, or particularly weaker at? What were his
24 strengths, what were his weaknesses that you observed in
25 practice?

1 A. The expectation was that we were at competitions --

2 MR. FRANK: Objection to the expectation.

3 THE COURT: Sustained.

4 Q. What was the actual occurrence? What -- did the rest of
5 the team members go to the games or not?

6 A. We were all there, regardless of if we were competing.

7 Q. Did the school provide you transportation and housing?

8 A. No, they did not.

9 Q. And so you guys had to go on your own?

10:10 10 A. Yes.

11 Q. But everybody went?

12 A. Yes.

13 Q. Okay. How many players are in the water at any one time
14 in a game?

15 A. You can have six field players and one goalie.

16 Q. Did Johnny go to the games that would go on during the
17 year when the redshirts would have to drive themselves?

18 A. Yes, he did.

19 Q. Okay. Did he go to more than one?

10:11 20 A. Yes, he did.

21 Q. How many do you remember him going to?

22 A. I don't have a number, but he was at the competitions like
23 the rest of us.

24 Q. Okay. Why was the team so big, 36, 38 people, if they
25 only had 14 or so playing?

1 were injured? What was their role if they were injured and
2 couldn't be in the pool actually training?

3 A. We were on the pool deck. We were setting up clocks,
4 passing out balls, weight belts, basically facilitating
5 practice.

6 Q. At some point were you injured during that season?

7 A. Yeah. I got sick and I was out for a period of time.

8 Q. And what was your problem?

9 A. I had strep throat.

10:13 10 Q. And how long were you out there?

11 A. A few weeks.

12 Q. Okay. Did there come a point in time where Johnny stopped
13 staying in the dark room by himself and actually was going back
14 to classes?

15 A. Yes.

16 Q. Okay. What did he do with respect to water polo?

17 A. He would do the normal things that somebody who was
18 injured would do, so all that stuff I described.

19 Q. How frequently was he coming to practice after he was out
10:14 20 of the dark room?

21 A. Every day.

22 Q. He was there every day?

23 A. Yes.

24 Q. Okay. And were there other injured people doing these
25 types of activities?

1 the coach, setting things up. He was a full member of the
2 team.

3 Q. How demanding was Coach Vavic?

4 A. Extremely.

5 Q. In what ways?

6 A. I would describe him as like the Bill Belichick of water
7 polo, so you were expected to be, you know, full water polo all
8 the time. Water polo was priority number one. If you were --
9 he said to me one time, if you were getting As and Bs, then you
10:31 10 were not focused enough on water polo. You should be getting
11 Cs and doing better in the pool.

12 Q. Did you ever meet Johnny's parents freshman year?

13 A. I did.

14 Q. Did you ever see them at a game?

15 A. I did.

16 Q. Who did you see at the game?

17 A. I saw Johnny's father at the game.

18 Q. Do you see him here in court today?

19 A. I do.

10:32 20 Q. Okay. Do you want to point him out to us?

21 A. He's right here with the light blue tie.

22 Q. Was it more than one game you saw him attend?

23 A. Yes.

24 Q. How many games? Can you give us an estimate of the number
25 of games you saw him at?

1 A. A handful.

2 Q. Okay. And what does a handful mean?

3 A. Somewhere in the five range.

4 Q. Okay. Was there any particular thing the team used to
5 tease Johnny about?

6 A. Yes. I don't remember how we found out about it, but one
7 time Johnny told us that he had done a swim from Alcatraz to
8 the shore in San Francisco and he was on Oprah.

9 Q. Okay. And that became a joke?

10:33 10 A. Oh, yeah. He was ragged quite a bit for that, not so much
11 the swimming from Alcatraz, because that's impressive, but for
12 being on Oprah as a little kid.

13 MR. KENDALL: If you could -- I'd like to show the
14 witness Exhibit 9527 for the witness only.

15 Q. Do you recognize this photo?

16 A. I don't recognize the photo, but I recognize people in it.

17 Q. Do you recognize what event it's from?

18 A. Yes.

19 MR. KENDALL: Okay. Your Honor, I'd like --

10:34 20 Q. Can you tell us what event it's from?

21 A. It's the national championships.

22 Q. That year that -- your freshman year?

23 A. That's right.

24 MR. KENDALL: Okay. Your Honor, I'd offer 9825 into
25 evidence.

1 MR. FRANK: No objection.

2 THE COURT: It will be admitted.

3 (Exhibit 9825 admitted into evidence.)

4 MR. KENDALL: Okay. And if could show the jury.

5 Q. Could you tell us who do you recognize?

6 A. I recognize some of my teammates. I recognize Johnny
7 there.

8 Q. Okay. You say you recognize Johnny. Is he the person in
9 the gray T-shirt closest to the fence?

10:34 10 A. Yes. That's right.

11 Q. Okay. Is that him circled?

12 A. Yes.

13 Q. Who's the person to his right?

14 A. That's Charlie McBean, another member of the team.

15 Q. Okay. And who else do you recognize from the team there?

16 A. I recognize Chase Cockwell.

17 Q. Where is he?

18 A. He's in the row below Johnny, in the gray, to the left
19 side. Yes.

10:34 20 Q. With the beard?

21 A. Yes.

22 Q. That's Chase Cockwell?

23 A. Chase Cockwell.

24 Q. Chase Cockwell.

25 A. And then above him, that's Colby Watson.

1 Q. And were you at this tournament?

2 A. I was.

3 Q. Okay. But you're not in this picture?

4 A. No.

5 MR. KENDALL: Could we have Exhibit 8028, please, for
6 the witness only. Excuse me. We've already gone through that.
7 Can we go back to 8028, please?

8 Q. For the people in the green, if we could just focus on
9 starting from the top green to the bottom green line. When did
10:36 10 Johnny leave the water polo team?

11 A. Sometime in January.

12 Q. When did you leave?

13 A. Sometime in March.

14 Q. And why did you leave?

15 A. To focus on school and to be out of that environment.

16 Q. Okay. Did you keep your As and Bs?

17 A. I did for the most part. I can't say they were all As and
18 Bs.

19 Q. For the other freshmen redshirts on that team, how many of
10:36 20 them left the team your freshman or sophomore year, that you
21 can recall?

22 A. You're saying out of the people in green here?

23 Q. Yes.

24 A. If I could just go down the list. Jake Taburchlick left
25 in his first year. Tyler left in the first semester. Chase

1 Cockwell stayed for at least couple years. Tim Leong was there
2 for I believe all four, but more than two years. I left.
3 Steve Michaud also left after his first year. And then
4 Tristan, Kyle, they remained on the team. Colby left and
5 Johnny left.

6 Q. Okay. When did Colby leave, to your memory?

7 A. First year.

8 Q. After you and Johnny left the team freshman year, did you
9 remain friends with people who were still on the team?

10:38 10 A. Yes, we did.

11 Q. Okay. Are you still friends today?

12 A. Johnny and I?

13 Q. And the other teammates.

14 A. Yes.

15 Q. Okay. Do you currently work for USC?

16 A. No.

17 Q. You graduated and you've gone off and left the school,
18 correct?

19 A. That's correct.

10:38 20 Q. Did any USC lawyers prepare you to testify today?

21 A. No.

22 Q. Does USC have any financial control or influence over your
23 income?

24 A. No. They just ask me for donations all the time.

25 MR. KENDALL: One moment, your Honor. Okay. No

1 MS. PAPENHAUSEN: Your Honor, the stipulation has been
2 marked as Exhibit 9070, if we could have that up on the screen,
3 please, while I read it.

4 "The parties hereby stipulate and agree as follows:

5 "If called to testify, Brandon Loftus, USC Assistant
6 Athletic Director for Budget and Financial Performance, would
7 state that for the period January 1, 2014 to March 5, 2019,
8 based on his personal review of the relevant documents, he has
9 no reason to believe there were any expenditures, debits, or
10 transfers from the USC men's water polo accounts to any USC
11 employee personally for any purpose unrelated to their
12 employment at USC."

13 THE COURT: All right. That is admitted as a
14 stipulation. It will not be admitted as an exhibit.

15 MR. KENDALL: Your Honor, I have a few documents I'd
16 like to offer that the Court has not looked at or ruled on.
17 And I will go through them somewhat briefly.

18 Would you like us to put them up on the screen for the
19 Court only to see?

11:45 20 THE COURT: Yes, that would be fine.

21 MR. FRANK: We would just request that they not be
22 described at length.

23 THE COURT: Yes.

24 MR. KENDALL: Okay.

25 Mr. Carter, could you put up 9901, please, and maybe

1 C E R T I F I C A T E
2
34 UNITED STATES DISTRICT COURT)
5 DISTRICT OF MASSACHUSETTS)
6
78 We, Kristin M. Kelley and Debra Joyce, certify that
9 the foregoing is a correct transcript from the record of
10 proceedings taken October 1, 2021 in the above-entitled matter
11 to the best of our skill and ability.
12
1314 /s/ Kristin M. KelleyOctober, 202115 /s/ Debra JoyceOctober 1, 202116 Kristin M. Kelley, RPR, CRR
17 Debra Joyce, RMR, CRR
18 Official Court Reporter
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Date